

January 17, 1980

LB 597

committee amendments to LB 597. Have you all voted? Record.

CLERK: 25 ayes, 0 nays on adoption of the committee amendments.

SPEAKER MARVEL: The motion is carried and the amendments are adopted. Senator Stoney.

SENATOR STONEY: Mr. President, I would now move that LB 597 be advanced to E & R initial. I would like to provide you with some insights as to what this bill would accomplish. It was the last one that was introduced during the last session so we were very late in holding the hearing on this proposal or it would have been before the body before now. In essence, it is the result of a recent United States Supreme Court decision and the U.S. District Court of Omaha decision which challenged the constitutionality of Nebraska's prejudgment attachment statutes. The Nebraska Supreme Court, through its committee on Practice and Procedure, incorporated these court decisions into this proposed legislation. Prejudgment attachments is a civil remedy where a creditor is able to post bond in court and have the property of the debtor held until the merits of the case can be decided. Now if the creditor is wrong, the debtor may sue and collect under that bond. This legislation needs to be passed for several reasons, the first being that there is considerable confusion among judges and lawyers as to the proper constitutional procedure to use in obtaining a prejudgment attachment. Since many aspects of our statutes in this area have been held unconstitutional these people must draw inferences from the court decision and the result is a patchwork procedure that is often cumbersome and nonuniform. Secondly, the rights of the debtor in some instances are being deprived. The bill attempts to limit prejudgment attachments to areas where the debtors are trying to cheat the creditors so to speak, thus the bill will protect the honest consumer. Finally, the rights of the creditor is clearly defined. The bill removes uncertainty as to the procedure to be used and thus makes prejudgment attachments more readily available. I would move that the bill be advanced by saying that again this was brought to us by the Supreme Court. There was no opposition to the bill. We did have supportive testimony from the Nebraska State Bar Association and also Judge Dale Fahrnbruch, District Court Judge here in Lancaster County.

SPEAKER MARVEL: The motion is the advancement of the bill to E & R for review, LB 597. All those in favor vote aye, opposed no. Record the vote, Mr. Clerk.